

UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF MICHIGAN

JESSE KENNEDY,

Plaintiff,

Court File No: 2:19-cv-10613-BAF-RSW  
Hon. Bernard Friedman

vs.

SOUTHFIELD FIRE DEPARTMENT,

Defendant.

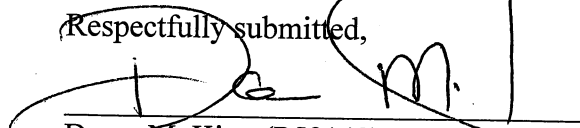
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**DEFENDANT'S MOTION TO DISMISS**

For the reasons stated in brief accompanying this motion, Defendant, Southfield Fire Department, by and through its attorney, moves this Court pursuant to Fed R. Civ. P. 12(b)(6) to dismiss Plaintiff, Jesse Kennedy's Complaint against Defendant for failure to state a claim upon which relief can be granted.

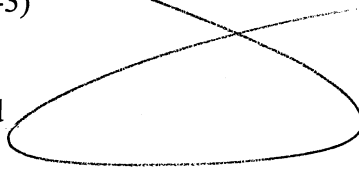
Concurrence: Plaintiff was contacted by Deputy City Attorney, Dawn King, via telephone on May 21, 2019 at 12:00 p.m. to discuss concurrence with Defendant, Southfield Fire Department's Motion to Dismiss the case. Plaintiff did not concur and stated he would file a Motion to Dismiss the case in federal court due to the City's failure to file a response when the Southfield Fire Department removed the case to this Court.

Respectfully submitted,



Dated: May 24, 2019

Dawn M. King (P58143)  
Deputy City Attorney  
City of Southfield  
26000 Evergreen Road  
Southfield, MI 48076  
(248) 796-5786  
dking@cityofsouthfield.com



**UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF MICHIGAN**

**JESSE KENNEDY,**

**Plaintiff,**

**Court File No: 2:19-cv-10613-BAF-RSW  
Hon. Bernard Friedman**

**vs.**

**SOUTHFIELD FIRE DEPARTMENT,**

**Defendant**

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**DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS**

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**UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF MICHIGAN**

JESSE KENNEDY,

Plaintiff,

Court File No: 2:19-cv-10613-BAF-RSW

vs.

SOUTHFIELD FIRE DEPARTMENT,

Defendant.

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**I. INTRODUCTION**

Plaintiff's Complaint asserts claims "under 15 U.S.C. § 1681 of the Fair Credit Reporting Act". Plaintiff's claims also state "violations, breach of security, to personal health information, actions occurred in the City of Southfield". Other than that, the complaint does not provide any additional information to support the underlying alleged claims. Therefore, without any specific information supporting the alleged stated claims, Defendant, City of Southfield Fire Department cannot prepare a proper defense or develop other plans to resolve this matter. Without supporting factual allegations to support a valid claim under 15 U.S.C. § 1681 of the Fair Credit Reporting Act or Michigan statute, the Complaint must be dismissed under Fed R. Civ. P. 12(b)(6)

**II. PROCEDURAL HISTORY**

Plaintiff filed an Affidavit and Claim ("the Complaint") in the Small Claims division for the 46th District Court of Michigan for the City of Southfield, Case number SC 19-0038, on January 24, 2019. (Exhibit 1) On February 11, 2019, the City of Southfield City received a copy

of the Complaint and the case was removed to the General Civil Division at the request of the City of Southfield. (Exhibit 2) On March 6, 2019 the City of Southfield, pursuant to 28 U.S.C. § 1441 and § 1446 filed a Notice of Removal to this Court and mailed a copy of the Notice of Removal to complainant at his address as listed in his Complaint.

Plaintiff also had a pending case that was related to the current matter that was recently dismissed. (United States District Court Eastern District of Michigan, Case No. 2:19-cv-10458) Therefore, the City of Southfield was in process of filing a Motion to Dismiss when it received an Order of Show Cause on May 15, 2019 filed by this Court as to why this case should not be dismissed due to Plaintiff's failure to prosecute pursuant to LR 41.2. (Exhibit 3)

The City of Southfield did not receive any other pleadings from Plaintiff other than initial service of the Complaint in the 46<sup>th</sup> Judicial District Court on January 24, 2019, received by the City of Southfield on February 11, 2019.

### **III. FACTUAL ALLEGATIONS**

The Complaint filed by Plaintiff does not contain substantive factual allegations. The information lists the Defendant as the Southfield Fire Department, city services. (Exhibit 1) Plaintiff is listed as an individual, Jesse Kennedy with an address of 26300 Summerdale Drive, Southfield, MI. The date of the claim, in the Complaint, is October 14, 15 of 2016, 4-25-2017, 12-13-2018. The amount of money claimed is \$6,000.00

The Complaint notates that the reason for the claim are "multiple violations under 15 U.S.C. § 1681 of the Fair Credit Reporting Act and violations, breach of security, to personal health information; actions occurred in the City of Southfield". The Complaint does not aver any other facts that describe the actions by the Southfield Fire Department that are alleged to

have violated 15 U.S.C. § 1681 of the Fair Credit Reporting Act or a breach of security to personal health information.

Even after serving Plaintiff with the Notice of Removal to this Court, Defendant, Southfield Fire Department did not receive any other supporting pleadings from the Plaintiff.

#### **IV. LAW AND ARGUMENT**

##### **A. LEGAL STANDARD**

Pursuant to Fed. R. Civ. P. 8(a)(2), a pleading that states a claim for relief” must contain a short and plain statement of the claim showing that the pleader is entitled to relief.” To survive a Motion to Dismiss, a complaint must contain sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its face.” *Ashcroft v Iqbal*, 556 US 662, 678(2009) (quoting *Bell Atl Corp v Twombly*, 550 US 544, 570(2007)) “Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects Rule 8(a)(2)'s threshold requirement that the “plain statement” possess enough to “show that the pleader is entitled to relief.” *Twombly*, 550 US at 545

A plaintiff's obligation to provide the “grounds” of his “entitle[ment] to relief” requires more than labels and conclusions, and a formulaic recitation of a cause of action's elements will not do. *Id* 550 US at 545. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Ashcroft v Iqbal*, 556 US 662, 679(2009) (quoting *Twombly* at 555)



**B. PLAINTIFF HAS NOT STATED A VALID CLAIM FOR RELIEF**

Plaintiff has failed to adequately plead his claims against the Southfield Fire Department under 15 U.S.C. § 1681 Fair Credit Reporting Act, or any other federal or Michigan laws. Plaintiff only cites that there are “multiple violations of the Fair Credit Reporting Act”, does not specify what violations were committed by the Southfield Fire Department. Also, Plaintiff states “breach of security to personal health information”. However, Plaintiff not only fails to specify the applicable federal or state law, but also fails to supplement the Complaint with factual allegations to support the claims. “Factual allegations must be enough to raise a right to relief above the speculative level on the assumption that all of the complaint's allegations are true. “*Twombly*, 550 US at 545”. “A plaintiff must “plead [ ] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Keys v Humana, Inc*, 684 F3d 605, 608 (6<sup>th</sup> Cir. 2012) (quoting *Ashcroft* 556 US at 678) Plaintiff’s Complaint does not provide fair notice of the factual allegations as to what the claim is actually about and the grounds upon which it rests. *Humana* 684 F3d 605 at 608 (quoting *Erickson v. Pardus*, 551 U.S. 89, at 93, (internal quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 at 555 (2007))).

Plaintiff’s statements in the Complaint do not provide anything that would allow the Southfield Fire Department to file a proper defense to this matter. Therefore, there is no claim for which relief can be granted.

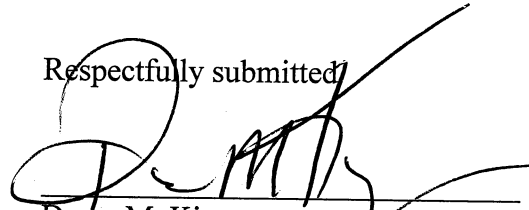
**V. CONCLUSION AND RELIEF REQUESTED**

Plaintiff’s allegations that there are “multiple violations of Federal Credit Reporting Act and breach of security of personal health information” falls short of stating a valid claim

for relief. Plaintiff's Complaint only cites a conclusion, and his request for \$6000 in damages. Facts that might support a cause of actions are absent from the pleadings. Accordingly, the Plaintiff's Complaint must be dismissed under Fed. R. Civ. P. 12(b)(6).

Dated: May24, 2019

Respectfully submitted,



Dawn M. King  
Attorney for Defendant  
City of Southfield  
26000 Evergreen Road  
Southfield, MI 48076  
(248) 796-5786

# **Exhibit 1**

Original - Court  
1st copy - Defendant  
2nd copy - Return  
3rd copy - Plaintiff

Approved, SCAO

STATE OF MICHIGAN  
46<sup>th</sup> JUDICIAL DISTRICT

AFFIDAVIT AND CLAIM  
Small Claims

CASE NO.

XXXX SC 19 0038

Court address

26000 Evergreen, Southfield, MI 48076

Court telephone no.  
248-796-5870

See instructions on the back of plaintiff and defendant copies.

1. JESSE KENNEDY  
Plaintiff  
26300 SUMMERDALE DRIVE  
Address  
SOUTHFIELD, MI 48033 248-808-5624  
City, state, zip Telephone no.

2. SOUTHFIELD FIRE DEPARTMENT  
Defendant  
24477 LAHSER RD  
Address  
SOUTHFIELD, MI 48033 248-796-5650  
City, state, zip Telephone no.

## NOTICE OF HEARING

For Court Use Only

The plaintiff and the defendant must be in court on

WEDNESDAY

APRIL 3, 2019

Day

Date

at 1:30 PM at ☒ the court address above.  
Time

☒ REPORT TO THE MEDIATION CENTER 1ST FLOOR  
Location

Fee paid: \$ 80.00

Process server's name

☐ 3. A civil action between these parties or other parties arising out of the transaction or occurrence alleged in this complaint has been previously filed in \_\_\_\_\_ Court. The case number, if known, is \_\_\_\_\_  
The action ☐ remains ☐ is no longer pending.

4. I have knowledge or belief about all the facts stated in this affidavit and I am  
☒ the plaintiff or his/her guardian, conservator, or next friend. ☐ a partner. ☐ a full-time employee of the plaintiff.

5. The plaintiff is ☒ an individual. ☐ a partnership. ☐ a corporation. ☐ a sole proprietor. ☐ Other

6. The defendant is ☐ an individual. ☐ a partnership. ☐ a corporation. ☐ a sole proprietor. ☒ CITY SERVICES  
Other

7. The date(s) the claim arose is/are OCTOBER 14, 15 OF 2016. 4-25-2017, 12-13-2018  
Attach separate sheets if necessary

8. Amount of money claimed is \$ 6,000.00. (NOTE: Plaintiff's costs are determined by the court and awarded as appropriate. They are not part of the amount claimed.)

9. The reasons for the claim are MULTIPLE VIOLATIONS UNDER 15 U.S.C. § 1681  
OF THE FAIR CREDIT REPORTING ACT, AND VIOLATIONS UNDER HIPAA  
COMPLIANCE - SEE 13401(C) BREACH OF SECURITY TO PERSONAL HEALTH INFORMATION  
ACTIONS OCCURRED IN SOUTHFIELD, MI

10. The plaintiff understands and accepts that the claim is limited to \$6,000 by law and that the plaintiff gives up the rights to  
(a) recover more than this limit, (b) an attorney, (c) a jury trial, and (d) appeal the judge's decision.

11. I believe the defendant ☒ is ☐ is not mentally competent. I believe the defendant ☒ is ☐ is not 18 years or older.

12. ☐ I do not know whether the defendant is in the military service. ☒ The defendant is not in the military service.  
☐ The defendant is in the military service.

Subscribed and sworn to before me on 1-24-19

Signature

County: Michigan.

My commission expires:

Date

Signature:

Deputy clerk/Notary public

Notary public, State of Michigan, County of

The defendant(s) must be served by

Expiration date

# **Exhibit 2**

UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF MICHIGAN

JESSE KENNEDY,

Plaintiff,

Court File No: *2:19-cv-10613-BAF-ASW*

vs.

SOUTHFIELD FIRE DEPARTMENT,

Defendant

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**NOTICE OF REMOVAL**

Defendant, Southfield Fire Department pursuant to 28U.S.C. § 1441 and 1446 files the following Notice of Removal with respect to Case No. GC-19-0736, currently pending in the 46<sup>th</sup> Judicial District Court, General Civil Division, State of Michigan, City of Southfield. In support of this Notice, Defendant states the following:

**PROCEDURAL HISTORY**

1. Plaintiff filed an Affidavit and Claim ("the Complaint) in the Small Claims division for the 46th District Court of Michigan for the City of Southfield, Case number SC 19-0038, on January 24, 2019. On February 11, 2019, the City of Southfield City Attorney's Office received a copy of the Complaint and the case was removed to the General Civil Division at request of the City of Southfield. The true and correct copy of the pleadings and related documents Plaintiff filed in state court are attached to these removal papers as Exhibit A. These documents in Exhibit A constitute all "process, pleadings, or orders" within the meaning of 28 U.S.C. § 1446.

2. Plaintiff's Complaint asserts claims "under 15 U.S.C. § 1681 of the Fair Credit Reporting Act" and "under 42 U.S.C. § 210 of The Health Insurance Portability and Accountability Act.

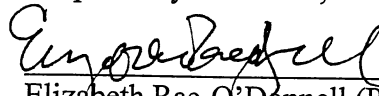
3. This court has jurisdiction over Plaintiff's 15 U.S.C. 1692k(d) Complaint under 28 U.S.C. § 1331, which provides for federal jurisdiction for all civil actions arising under the laws of the United States; under 28 U.S.C. § 1391, which provides for federal jurisdiction over claims raised under The Health Insurance Portability and Accountability Act. ("HIPAA") 42 USCA 1320d-6 et seq; and 15 U.S.C. § 1681P, which provides for federal jurisdiction over claims raised under the Fair Credit Reporting Act ("FCRA", 15 U.S.C. §1681 et seq)

4. This Court is the District Court of the United States for the district and division embracing the place where this action is currently pending, as required by 28 U.S.C. § 1441 (a).

5. This Notice is timely filed because it is made within 30 days after the City of Southfield City Attorney's office received the Complaint setting forth a removable claim, which is the first date from which it could be ascertained that this action is removable. 28 U.S.C. § 1441 (a).

Written notice of the filing of this Notice of Removal has been served upon the Plaintiff, and a copy will concurrently be filed with the 46<sup>th</sup> District Court Clerk of Court

Respectfully submitted,



Elizabeth Rae-O'Donnell (P41529)

City Attorney

City of Southfield

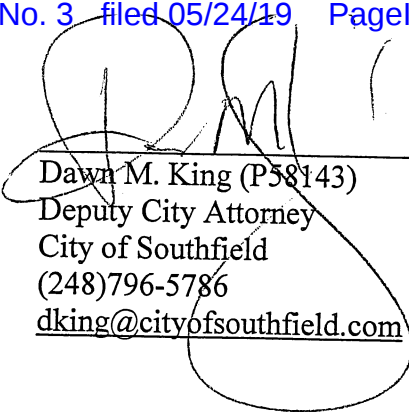
26000 Evergreen Road

Southfield, MI 48076

(248) 796-5786

[eraeodonnell@cityofsouthfield.com](mailto:eraeodonnell@cityofsouthfield.com)

Dated: February 27, 2019



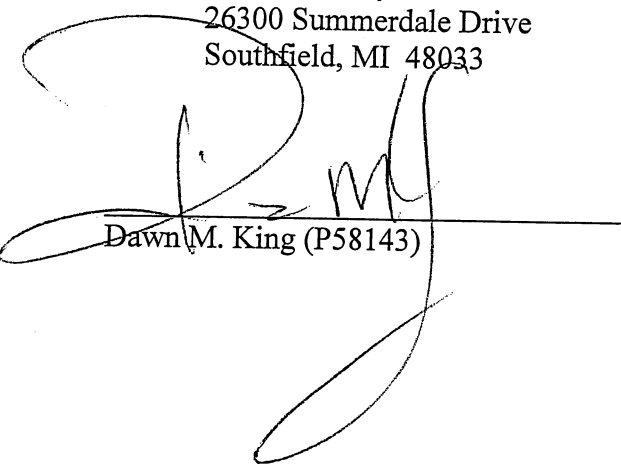
Dawn M. King (P58143)  
Deputy City Attorney  
City of Southfield  
(248)796-5786  
[dking@cityofsouthfield.com](mailto:dking@cityofsouthfield.com)

**CERTIFICATE OF SERVICE**

I certify that on March 1, 2019, I electronically filed the foregoing pleadings with the Clerk of the Court using ECF system which will send notification of such filing to counsel of record and served upon the following parties via U.S. First Class Mail as follows:

Clerk of the Court  
46<sup>th</sup> Judicial District Court  
General Civil Division  
26000 Evergreen Road  
Southfield, MI 48076

Jesse Kennedy  
26300 Summerdale Drive  
Southfield, MI 48033



Dawn M. King (P58143)



# **Exhibit 3**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

Jesse Kennedy,

Plaintiff(s),

v.

Case No. 2:19-cv-10613-BAF-RSW  
Hon. Bernard A. Friedman

City of Southfield,

Defendant(s),  
\_\_\_\_\_

**ORDER TO SHOW CAUSE**

IT IS HEREBY ORDERED that Plaintiff(s) SHOW CAUSE, in writing, by 5/29/2019, why the above-entitled case should not be dismissed for failure to prosecute, pursuant to E.D. Mich LR 41.2. Failure to respond may result in dismissal of the case.

s/Bernard A. Friedman  
Bernard A. Friedman  
U.S. District Judge

**Certificate of Service**

I hereby certify that this Notice was electronically filed, and the parties and/or counsel of record were served.

By: s/J. Curry-Williams  
Case Manager

Dated: May 15, 2019

UNITED STATES DISTRICT COURT  
EASTERN DIVISION OF MICHIGAN

JESSE KENNEDY,

Plaintiff,

Case No. 2:19-cv-10613-BAF-RSW  
Hon. Bernard A. Friedman

v.

SOUTHFIELD FIRE DEPARTMENT,

Defendant

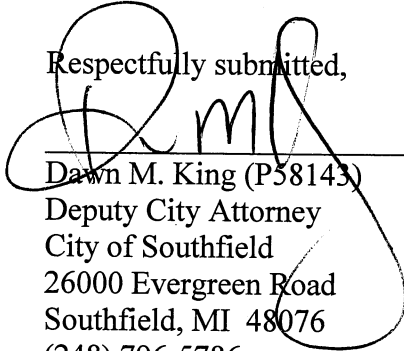
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 24, 2019, I electronically filed Defendant's Motion to Dismiss and Defendant's Brief in Support of Motion to Dismiss with the Clerk of the Court using the ECF system, which will send notification to *All Parties and Attorneys of Record*.

Respectfully submitted,

Dated: May 24, 2019



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Dawn M. King (P58143)  
Deputy City Attorney  
City of Southfield  
26000 Evergreen Road  
Southfield, MI 48076  
(248) 796-5786  
[dking@cityofsouthfield.com](mailto:dking@cityofsouthfield.com)